

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0265P
Tax Administration—Penalty
For the Years 2000 & 2001**

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ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer did not report and pay the required use tax on its purchases of fixed assets and operating expenses as required.

Taxpayer is a subsidiary of a corporate group whose parent is a foreign corporation. The parent's principal line of business is to serve the investment and capital needs of individuals and institutional clients through its broker-dealer subsidiaries such as taxpayer.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as

negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care in that taxpayer did not accrue and pay use tax on purchases of fixed assets and operating expenses as required. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

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